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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,814	01/21/2004	Daniel S. Henry	12929.5006USC1	1001
23552	7590	01/06/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 01/06/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,814

Applicant(s)

HENRY ET AL.

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-28 is/are allowed.
- 6) ☒ Claim(s) 29, 30, 32 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 23-32 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claim 29, filed on **10/21/2005**, applicant has amended the claims to include the following:

- The baffle plate being moveable from a “**substantially horizontal**” closed configuration to an open configuration.

Applicant argues **US000163678 (Merrill)** “fails to disclose or suggest a door positioned at a top plate E of the fireplace”. However, it is noted that applicant's claim 32 recites opening an access door positioned “at a top wall” of the stove, and not at a top “plate”. The structure of the stove being otherwise undefined, the Examiner maintains the position that the broadly claimed “at a top wall” does not patentably distinguish over the door (O) located in at top or upper wall portion (at B) of the stove of **US000163678 (Merrill)** or **US002461068 (Lookwood)**. Also regarding claim 32 and **US000163678 (Merrill)**, applicant's attention is directed to the manifold (S) of **US000163678 (Merrill)** which is performs as and is the structural and functional equivalent to applicant's broadly claim baffle plate. This “hollow plate S” is moved from a generally horizontal position (figure 8) to a vertical position (figures 7 and 8; see phantom lines) to open aperture (p) to permit charging or loading of fuel into the magazine through plate (P).

Notwithstanding the Examiner's interpretation of “at a top wall” in applicant's claim, **US004856491 (Ferguson et al)** clearly teaches that it would have been obvious to a person having ordinary skill in the art for the reasons set forth in the examiner's action. That is, **US000163678 (Merrill)** already relying on an arrangement where fuel loading necessarily

occurs above the moveable baffle (S) by access through a door (O) in a top or upper wall of the stove, relocating the fuel loading or access door to an alternative upper most, or top wall, location, as taught by **US004856491 (Ferguson et al)**, would have been obvious at the time of the invention. That is, it would have been obvious to a person having ordinary skill in the art “to allow for top loading of the fuel load into the primary combustion chamber”, in the same manner intended not only by applicant but by **US000163678 (Merrill)**. Indeed, **US004856491 (Ferguson et al)** also acknowledges the step of loading fuel into the fire chamber need not be limited to the top wall access door and fuel may alternatively be loaded through a side wall door (28). In this regard **US004856491 (Ferguson et al)** represents the level of ordinary skill in the art at the time of the invention by stating that “The kindling and fuel may be loaded either through door 28, or griddle 22.”. And, teachings related to the level of ordinary skill in the art regarding the obvious positioning of fuel loading doors in stoves are further represented by the prior art references **US002461068 (Lookwood)** (see inclined top wall access doors (15) and horizontal top wall door (18) and **US002196467 (Masonick)** (see top wall access door (42)), both of record. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In view of the level of ordinary skill represented in the prior art as a whole there is ample support for the examiner’s position that, for the purpose of a decorative or aesthetically pleasing view of the fire through a front loading door and for providing a removable griddle surface on the top of the stove which also permits fuel loading access, it would have been obvious to a person having ordinary skill in the art at the time of applicant’s invention to modify **US00163678 (MERRILL)** to include both front door and top loading access doors, in view of the teaching of **US004856491 (FERGUSON ET AL)**. Applicant is reminded that the test for obviousness is not whether the features of the secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would

have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 32: Rejected under 35 U.S.C. 102(b)

Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by US00163678 (MERRILL) (of record).

US00163678 (MERRILL) shows and discloses method of adding fuel to a stove, a stove comprising:

- the stove body including at least a front wall (B);
- moving a baffle plate (M) of the stove from a substantially horizontal closed configuration (Figures 2, 5) to an open configuration (see figures

- 3, 8) (It is noted that both the open and closed configurations are substantially horizontal however applicants' claim does not specify the orientation of the "open configuration");
- drawing heat and gases from the fire out through a by-pass pathway ((at P and G; figure 8) into a chimney of the stove;
 - opening an access door (O) positioned at a top wall (i.e. – at B, O; the top front wall portion) of the stove;
 - loading fuel through the door (i.e. – "The magazine is charged through a doorway, O, in front of eh stove, or by other convenient channel. Two plates , of which on, P, ids fixed, and the other one, Q, is movable, prevent the coal dropping directly into the fire in the operation of charging the magazine"), past the baffle plate (M), and into the combustion chamber;
 - moving the baffle plate into the substantially horizontal closed configuration; and
 - closing the access door (i.e. – "Except while being charged, the magazine is closed at top by means of a flap or cover, M, having a handle, N, outside of the stove.").

Claim 32: Rejected under 35 U.S.C. 102(b)

Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by US002461068 (LOCKWOOD) (of record).

US002461068 (LOCKWOOD) shows and discloses method of adding fuel to a stove, a stove comprising:

- moving a baffle plate (19) of the stove from a substantially horizontal closed configuration to an open configuration (not shown; see figure 4)
- drawing heat and gases from the fire out through a by-pass pathway (18) into a chimney of the stove;

- opening an access door (15) positioned at a top wall of the stove;
- loading fuel through the door;
- moving the baffle plate into the substantially horizontal closed configuration; and
- closing the access door.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29, 30, 32: Rejected under 35 U.S.C. 103(a)

Claims 29, 30 and 32 are rejected under 35 U.S.C. 103(a) as obvious over **US00163678 (MERRILL)** in view of **US004856491 (FERGUSON ET AL)**, both of record.

US00163678 (MERRILL) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the stove body including at least a front wall and a top wall each defining an opening for access doors therein.

US004856491 (FERGUSON ET AL) teaches, form the same solid fuel burning heater field of endeavor as **US00163678 (MERRILL)**, providing a the stove body including at least a front wall and a top wall each defining an opening for a front access door (28) and a top fuel loading door (21) therein, respectively.

In regard to claims **29, 30 and 32**, for the purpose of a decorative or aesthetically pleasing view of the fire through a front loading door (see column 9, lines 48-60) and for providing a removable griddle surface on the top of the stove which also permits fuel loading access, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify **US00163678 (MERRILL)** to include both front door and top loading access doors, in view of the teaching of **US004856491 (FERGUSON ET AL)**.

Allowable Subject Matter

Claims 23- 28 are allowed.

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 23-28, the prior art of record fails to teach or show a stove including the elements recited and arranged in the manner set forth in claim 23 wherein the air manifold is coupled, that is linked, to a baffle plate.

Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

cp